

TO: Sunshine Task Force
FROM: Bob Brownstein
SUBJECT: Public Subsidies Definition
DATE: May 9, 2007

Following the direction of the Task Force, Dan McFadden and I met on May 7th to attempt to reach agreement on the definition of public subsidy. Although the definition has been revised to meet many of city staff's concerns, we were not able to reach full agreement.

I believe the major outstanding issue is that staff does not want to include capital improvements on public facilities operated by a private party. It is my view that covering such facilities is clearly in the spirit of open government. If the city were to build a \$300 million dollar stadium for a sports team and receive minimal rent and then the team asked for a \$100 million capital improvement plan, that would certainly be a subsidy. As I have mentioned before, the language I'm suggesting does not attempt to determine the merits of the subsidy. It simply requires that the details of the subsidy be publicly disclosed – the source of funds, the net fiscal impact, etc.

Therefore, I recommend that the Task Force adopt the definition stated below (language between parentheses are explanatory and not part of the definition):

“A public subsidy is a provision of economic value by the City or the RDA to a private entity for purposes beneficial to the public, such as the operation of a business or event within San Jose, but for which the City or RDA do not directly or indirectly receive goods or services in return for that expenditure.

For the purposes of this definition, “provision of economic value” is defined as:

- Cash payments;
- Loans at below market interest rates or loan guarantees;
- Land or access to land at prices below fair market value;
- Buildings or access to buildings at prices below fair market value as determined by either the city's purchase price or appraisal (purchase price may be used for “unique” structures for which the city does not want to do a costly appraisal);
- Waiver or reduction of fees or taxes;
- Capital improvements to a public facility operated by the private entity from which the private entity secures revenue.

For the purposes of this definition, “goods or services” include products or services provided at prices below market value. (For example, if the city pays businesses or non-profit organizations to make affordable housing units or discounted rides on buses or shuttles available to residents, it is purchasing the discount and not offering a subsidy).

For the purposes of this definition, if the city or RDA signs a contract that stipulates the amount and terms of a subsidy for several years, the subsidy requiring disclosure is the initial approval of the contract, not the annual payments rendered in accordance with the contract. (Under this provision, if the city adopts a five-year contract to subsidize the Arena, only the adoption of the contract that sets forth the plan for five years of payments would require a full disclosure report.)